

ADVISORY OPINION 2001-007

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

October 12, 2001

Hon. Jonathan L. Gay
Walther, Roark, Gay & Todd, PLC
163 East Main Street, Ste. 200
P. O. Box 1598
Lexington, Kentucky 40588-1598

Dear Mr. Gay:

This is in response to your letter on behalf of the Woodford County Young Democrats ("WCYD") dated September 10, 2001, requesting an advisory opinion regarding whether the WCYD is an organization that is regulated by the Registry.

You state that the WCYD is an unincorporated association that may wish to incorporate in the future. You describe the purpose of the WCYD as attracting young people to the Democratic Party, encouraging the registration of Democrats, and spurring the involvement of people in supporting Democratic candidates. You describe most of your expenditures as social, including after-hours business events, educational, such as scholarships, or pro-Democratic Party, such as the purchase of pro-Democratic Party paraphernalia. You explicitly state that the WCYD "does not expend any money to directly support the election or defeat of any particular candidate, nor does WCYD spend money to directly support the Democratic Woodford County Executive Committee."

Regarding fundraising, your questions indicate that the WCYD would like to solicit funds from outside its membership, including from corporations and political action committees

You ask the following specific questions, the Registry's response to which follows:

(1) Is the Woodford County Young Democrat organization an organization which is regulated by the Kentucky Registry of Election Finance?

KRS 121.015(3) defines five (5) types of committees that fall within the jurisdiction of the Registry, including a permanent committee, defined as follows:

“Permanent committee,” which means a group of individuals an association, committee or organization, other than a campaign committee, political issues committee, inaugural committee, or party executive committee, which is established as, or intended to be, a permanent organization having as a primary purpose expressly advocating the election or defeat of one (1) or more clearly identified candidates, slates of candidates, or political parties, which functions on a regular basis throughout the year. KRS 121.015(3)(c)(emphasis added).

In Advisory Opinion 1994-018 to the Louisville Young Democrats, the Registry opined that under prior law a social club that also supported a political party and its candidates, although it did not intend to make monetary contributions, would nonetheless constitute a permanent committee.¹ Since amended in 1996², the definition of permanent committee requires more than generalized support for a candidate or political party. Rather, what is required is the express advocacy of the election or defeat of a clearly identified candidate, slate of candidates or political party. Therefore, this issue, although similar to the one considered in KREF Advisory Opinion 1994-018, requires a new analysis.

You state that the WCYD's primary purpose is to attract more people to the Democratic Party, including by encouraging voter registration. The WCYD intends to accomplish this goal by hosting social events. Although the WCYD intends to encourage young people to volunteer to support Democratic candidates, it does not intend to make monetary contributions to candidates or political party executive committees. Therefore, the WCYD is largely a social organization, the primary purpose of which does not fall within the definition of permanent committee under KRS 121.015(3)(c)(as amended).

However, the WCYD may still be regulated by the Registry of Election Finance if it engages in conduct that is governed by KRS Chapter 121. Specifically, if the WCYD gives anything of value, including t-shirts, other Democratic campaign paraphernalia, and

¹ The 1994 definition of permanent committee extended to associations and organizations with a primary purpose of “political activity which may include support or opposition to selected candidates, slates of candidates, political parties...” KRS 121.015(3)(c) (1994).

² 1996 Acts Chapter 153 § 4.

food, to a candidate, political party or inaugural committee free of charge or at a rate that is less than market value, then an in-kind contribution may result. KRS 121.015(6)(c), (d). In such a case, the WCYD would be required to report such a contribution to the Registry, if the contribution exceeded one hundred dollars (\$100) in the aggregate per election. Similarly, the WCYD would be required to report any independent expenditures as defined under KRS 121.015(12) and KRS 121.150(1). Therefore, although the WCYD is not a permanent committee, it may be an organization that is regulated by the Registry.

(2) If the Woodford County Young Democrats incorporate as a non-profit political corporation, would this change the opinion of the Kentucky Registry of Election Finance?

The answer to this question is yes, because under KRS 121.025 and § 150 of the Kentucky Constitution, corporations, even if they are organized as non-profit corporations, may not support candidates, even indirectly. Since your organization intends to encourage young people to support Democratic candidates and since you intend to purchase pro-Democratic paraphernalia, a corporate status could lead to a violation of KRS 121.025.

(3) Are there any restrictions upon the amount of contributions, or the person or entity from whom the WCYD may accept contributions? For example, may WCYD accept contributions from corporations or political action committees?

Although the Registry does not regulate the solicitation of funds by organizations that do not fall within the definitions of candidate or committee under KRS 121.015, the ability of the entities you mention to give to the WCYD is limited under KRS Chapter 121. Under KRS 121.025 and § 150 of the Kentucky Constitution, corporations are expressly prohibited from giving anything of value either directly or indirectly toward the election of candidates. As explained in response to Question 2, although the WCYD does not intend to make monetary contributions to candidates, it does intend to encourage support of Democratic candidates in general. Therefore, a corporation would be prohibited from giving to your organization.

Under KRS 121.175 and 32 KAR 2:200, permanent committees are prohibited from making expenditures other than allowable campaign expenditures. In prior opinions, the Registry has held that social expenditures are not allowable campaign expenditures. See, e.g., KREF Advisory Opinions 1996-004 and 1998-005. Further, the solicitation from and contributions by campaign committees, political issues committees, permanent committees and party executive committees to religious, charitable, civic or eleemosynary organizations is expressly prohibited. KRS 121.150(2).

Finally, how and from whom the WCYD solicits funds may be relevant to its categorization under KRS Chapter 121. If the WCYD solicits funds solely from within its

membership, acting largely as a social club, it falls within the definition of contributing organization, and would not fall under the Registry's jurisdiction until it makes a contribution, either monetary or in-kind. If alternatively, WCYD solicits funds from outside its membership and uses such funds to finance pro-Democratic paraphernalia and partisan get-out-the-vote drives, it may be considered a permanent committee under the KRS 121.015(3)(c) and may be subject to further regulation under KRS Chapter 121, including contribution limits.

(4) Is there any prohibition against incorporating WCYD?

No provision of KRS Chapter 121 directly precludes an organization that is not a committee under KRS 121.015(3) from incorporating. However, KRS 121.025 and § 150 of the Kentucky Constitution, as explained in response to Question 2, circumscribe the political conduct of corporations. In addition, you may wish to consult federal law, specifically sections 501(c)(3) and 527 of the Internal Revenue Code concerning the political conduct of non-profit organizations and the political organization status. Note that certain § 527 organizations have reporting requirements under recent amendments to the Code.

This opinion reflects the Registry's consideration of the specific transaction posed by your letter. If you have any additional questions, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/jh

Cc: Registry Members
Sarah M. Jackson, Executive Director